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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,882	10/08/2003	John P. Fulwiler	FULWILER	6436

7590 02/25/2005

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EXAMINER

MULLEN, THOMAS J

ART UNIT	PAPER NUMBER
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2632

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/680,882

Applicant(s)

FULWILER, JOHN P.

Examiner

Thomas J. Mullen, Jr.

Art Unit

2632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) ☒ Notice of References Cited (PTO-892) | 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) ☐ Notice of Informal Patent Application (PTO-152) |
| 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) ☐ Other: ____. |

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1. a) The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 14 (see page 6, line 6 of the specification).

b) The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "switching means" (claims 1 and 11) must be shown, and clearly identified by a reference numeral, or the feature(s) canceled from the claim(s). No new matter should be entered. In Fig. 1, there appear to be two switch-type elements shown--one on battery case 24, and one on flap 26 adjacent to Velcro element 30--which might correspond to the claimed "switching means"; clarification is requested.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The disclosure is objected to because of the following informalities:

page 3, line 2, "hazzard" should be --hazard--;

page 4, line 9, "provides" should be --provided--;

page 6, line 6, it appears that "surfaces" should be --surface--;

page 6, line 20, "tyle" should be --style--;

page 7, line 3, it appears that "are" should be --as--;

page 8, line 15, it appears that "or" should be --of--; and

page 9, line 12, "hazzards" should be --hazards--.

Appropriate correction is required.

3. Claims 10, 14, 17 and 20 are objected to under 37 CFR 1.75(a) for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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At the end of claims 10 and 20, "said flexible tether member" lacks clear antecedent basis; note "flexible envelopment tether(s)" in claims 1 and 11, respectively.

In claim 14, "said first and second light means" (line 2) lacks antecedent basis, and in claim 17, "said first and second light support faces" (lines 2-3) lacks antecedent basis; note the dependency of these claims.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The particular meaning of the terms "reversibly" and "reversible", as to how they are intended to further limit the claim recitations pertaining to securing tethers or flaps 26 together (in an "envelopment configuration"), is not clear. For example, each of claims 1 and 11 recite "clasping means for reversibly securing said...(one or more) tether(s) in an envelopment configuration", the "clasping means" referring to Velcro elements 28 and 30 of Fig. 1; however, it is apparent from the disclosure as a whole that--while tethers or flaps 26 might literally be "reversibly" securable to one another using the Velcro elements 28 and 30 (i.e., by folding or rolling the upper and lower flaps 26 of Fig. 1 towards each other until they come into contact, in the context of "wrapping" the flaps 26 and support member 12 around an appropriate stand or mounting structure, the flaps conceivably being "reversibly" foldable or rollable either in a direction "into" the paper, or "out of" the paper)--the LED light panels 22 and associated "light support face" (14 in the specification) are only disclosed as being mounted on one side of flexible support member 12 (i.e. the side facing "out of" the paper--see page 6, lines 5-7 of the specification), such that in order to have the light panels 22 face outwardly (as presumably intended), the tethers 26 may only be brought together in one direction (and thus not "reversible"), i.e. the direction "into" the paper, since if tethers 26 are brought together in the opposite ("reversed") direction the light panels 26 will face inwardly and defeat the purpose of

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the "safety flare system" by not being outwardly visible. Further, the physical protrusion of "pocket" 20 and battery case 24 (as shown in Fig. 1) would appear to preclude bringing the tethers 26 together in the opposite ("reversed") direction, so as to be "clasped" by Velcro elements 28 and 30. In addition to the above-noted recitation in claims 1 and 11, see also the analogous recitations in claims 6-10 and 16-20.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Endo et al (US 5434759).

Note in Endo et al (Figs. 8, 11 and 22; col. 3, line 47 to col. 6, line 20; and col. 7, lines 53-66), flexible support member (2,3,4); light support face 8; flexible envelopment tether 14; clasping means (16,17) or (14a,14b); light means 9; power means 10,11; and switching means 29.

Regarding claims 2 and 4, the light means 9 are a plurality of LEDs (Abstract).

Regarding claims 3 and 5, the light means 9 may be a plurality of "flashing" LEDs (col. 2, lines 20-21).

Regarding claims 6-9, flexible support member (2,3,4) includes sheets 2 and 3 "formed of a cloth material" (col. 3, lines 49-50); and, flexible tether 14 is made of "an elastic cloth material" (col. 4, line 52) and inherently comprises first and second "swatches" fixedly connected to the flexible support member (2,3,4) (via "belt holders" 7--col. 4, lines 49-51, best shown in Figs. 2 and 4) and having the clasping means (16,17) or (14a,14b) situated at their "loose" ends (see Figs. 1 and 11) for "reversibly" securing the swatches.

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8. Claim 10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph and objection(s) under 37 CFR 1.75(a), set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 11-20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph and objection(s) under 37 CFR 1.75(a), set forth in this Office action.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

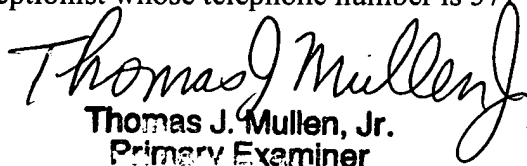
Kolm et al (US 4345305), MacKenzie (US 5149190) and DeYoung (US 6515584) were mentioned by applicant in the specification. Tung (US 6448902), Campbell et al (US 6669627), Maki et al (US 6193385), Small et al (US 6406164), Hall (US 5585783), and Chen et al (US 6520669) are cited to further show the state of the art.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Mullen, Jr. whose telephone number is 571-272-2965. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Wu, can be reached on (571) 272-2964. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2600.

TJM


Thomas J. Mullen, Jr.
Primary Examiner
Art Unit 2632